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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,808	11/14/2000	Margaret M. Ward	KCX-117 (14096)	9551

7590

03/24/2003

John E. Vick, Jr.
Dority & Manning, P.A.
P.O. Box 1449
Greenville, SC 29602

EXAMINER

HALPERN, MARK

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 03/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/712,808

Applicant(s)

WARD ET AL.

Examiner

Mark Halpern

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,5-7,9,11,12,14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,8,10,13 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

- 1) Acknowledgement is made of Response received 1/13/2003, Paper No. 9.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 2) Claims 1, 4, 8, 13, are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Merker (6,277,241). Merker discloses a three plies absorbent paper product, said paper product includes a paper towel, a napkin, and other similar products (col. 1, lines 12-21). A paper product, a

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tissue, is disclosed by Farrington (5,129,988) and by Edwards (5,494,554); both of said patents being incorporated into Merker by reference (Merker, col. 7, lines 10-14). The paper product has a middle layer located between two outer layers. The middle layer is of a bulk greater than the bulk of the two outer layers; the middle layer accounts for 47% by weight, and each of the outer layer accounts for 26% by weight (Merker, col. 10, lines 24-30). Since the middle layer is not subject to any pressures or forces that would make the bulk of the middle layer of increased density than the density of the outer layers, it is inherent, or in the alternative obvious, to one skilled in the art at the time the invention was made, that the middle layer is thicker than the surrounding outer layers. The Merker paper product is through air dried (col. 7, lines 40-45), and creped during its manufacturing (col. 8, lines 27-61). The plies receive a chemical enhancement (col. 6, lines 16-36).

3) Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Merker (6,277,241) in view of Salman (5,904,812). Merker is applied as above for claim 1, Merker fails to disclose the tissue being calendered. Salman discloses a tissue being calendered (Abstract). It would have been obvious, to one skilled in the art at the time the invention was made, to combine the teachings of Merker and Salman, because such a combination would improve smoothness and gloss in the product of Merker, a consumers desired quality in a tissue, as disclosed by Salman (Salman, col. 1, lines 5-53).

4) Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Merker (6,277,241) in view of Mahl (4,355,021). Merker discloses a method of manufacturing

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a three plies absorbent paper product, said paper product being a paper towel, a napkin, or a similar product (Merker, col. 1, lines 12-21, and col. 6, line 57 to col. 8, line 62). A paper product, a tissue, is disclosed by Farrington (5,129,988) and by Edwards (5,494,554); both of said patents being incorporated into Merker by reference (Merker, col. 7, lines 10-14). The paper product has a middle layer located between two outer layers. The middle layer is of a bulk greater than the bulk of the two outer layers; the middle layer accounts for 47% by weight, and each of the outer layer accounts for 26% by weight (Merker, col. 10, lines 24-30). Merker fails to disclose administering to the middle ply a chemical agent selected from the following agents: activated carbon, antibacterial agents, and foam. Mahl discloses a virucidal agent added to a paper tissue, said virucidal agent is impregnated within the tissue (Mahl, col. 1, lines 5-10, and col. 2, line 45 to col. 3, line 17). It would have been obvious, to one skilled in the art at the time the invention was made, to combine the teachings of Merker and Mahl, by adding the virucidal agent of Mahl into the middle ply product of Merker, because such a combination would provide for an improved product of Merker, since its use would reduce respiratory viral infections as disclosed by Mahl (Mahl, col. 3, lines 1-22).

5) Claims 1, 8, are rejected under 35 U.S.C. 102(b) as being anticipated by Floden (3,837,995).

Claim 1: Floden discloses a tissue (col. 3, line 70) of composite nonwoven web 20, wherein a layer 22 made of thermoplastic microfibers 18 is located between two outer layers 24 and 26 of natural fibers 14 (col. 4, lines 14-25, and Figure 2). The outer layer of natural fibers has a degree of porosity (col. 3, lines 30-40, and col. 4, lines

54-57). This reads on claimed outer layers being permeable. The layer of natural fibers has a thickness of from $\frac{1}{2}$ to 50 times the thickness of the microfibrinous inner layer (col. 3, lines 5-10, and col. 6, lines 47-50). Therefore, for the partial span of between $\frac{1}{2}$ and 1 times the thickness of the microfibrinous layer, the thickness of the middle layer of Floden is greater than the thickness of the outer layers.

Claim 8: the tissue is creped (Floden, col. 3, lines 69-70).

Response to Amendment

6) Applicant's arguments filed 1/13/2003, have been fully considered but they are not persuasive.

Applicant alleges that Merker does not disclose "at least three plies" structure, but addresses a "stratified fiber furnish having three principal layers". Applicant alleges that plies and layers are different from each other, thus the rejection is not proper.

The argument is not well taken. The terms "ply" and "layer" are used interchangeably in the paper industry. Webster's New World Dictionary defines a "ply" as a "layer" (last 8 lines of pg. 1126, copy enclosed). The reference, Merker, uses the term and refers to "multi-ply" and "two-ply" products in the cited reference (col. 8, lines 5-15). The present specification does not disclose claimed "a composite tissue structure having at least three plies" that is structurally different from "at least three fibrous layers" tissue of Merker.

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Conclusion

7) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halpern whose telephone number is 703-305-4522. The examiner can normally be reached on Mon-Fri, (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703-308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7718 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Mark Halpern
Patent Examiner
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March 19, 2003